



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Southwest Photo Chem Inc.
350 Electra Street
Pomona, CA 91766

CERTIFIED MAIL NO. Z 245 569 071
RETURN RECEIPT REQUESTED

John J. Jeleniewski
C/O Roberta Smith
535 Laurel Ave
Pomona, CA 91768

CERTIFIED MAIL NO. Z 245 569 072
RETURN RECEIPT REQUESTED

Rose Marie Jeleniewski-Haskins
RD #1, Box 2190
Enosberg Falls, Vermont 05450

CERTIFIED MAIL NO. Z 245 569 073
RETURN RECEIPT REQUESTED

Re: CERCLA Section 106 Unilateral Administrative Order 99-12;
Southwest Photo Chem Inc., Superfund Removal Site, Pomona, California

To whom it may concern:

The United States Environmental Protection Agency ("EPA") hereby issues the enclosed Unilateral Administrative Order, number 99-12, pursuant to EPA's authority under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9606, to prevent or mitigate the imminent and substantial endangerment to the human health, welfare, and environment posed by the Southwest Photo Chem Inc., ("SWPC") Superfund Removal Site.

On Friday, June 18, 1999, EPA gave John J. Jeleniewski, the present owner and operator of SWPC, a verbal Notice of Federal Interest with regard to the present conditions at the the facility. On Thursday, June 24, 1999, EPA gave Rosemarie Jeleniewski-Haskins, a former owner and/or operator of SWPC, a verbal Notice of Federal Interest over the telephone.

The Order requires each named Respondent to take immediate actions to prevent and contain any release or potential release of hazardous substances, materials, and/or wastes from SWPC facility. Please be advised that pursuant to paragraph 19 of the UAO, the UAO is effective seven days after receipt by Respondent, or on or about July 8, 1999. Pursuant to paragraph 36, Respondents have two days thereafter to notify EPA of their intent to comply (NTC) with the UAO. A failure on the part of any Respondent to provide the required NTC shall be interpreted by EPA as a refusal to comply with the UAO.

If you have technical questions regarding the Order, please contact Bill Lewis at (415) 744-2292. If you have any legal questions, please contact David Rabbino at (415) 744-1336.

Sincerely,

A handwritten signature in black ink that reads "Keith Takata" followed by a horizontal line.

Keith Takata, Director
Superfund

encl.: Unilateral Administrative Order 99-12

cc: Paul Biren LAFD
Paul Baranich DTSC

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 IN THE MATTER OF:)

4 Southwest Photo Chem, Inc.;)

5 John Jeleniewski; and) U.S. EPA Docket No. 99-12

6 Rose Marie Ann Jeleniewski)

UNILATERAL ADMINISTRATIVE

ORDER FOR

7 Proceeding Under Section 106(a))

PERFORMANCE OF REMOVAL

8 of the Comprehensive Environmental)

ACTION

9 Response, Compensation, and)

Liability Act of 1980,)

42 U.S.C. § 9606(a))

10 I. AUTHORITY

11 This Unilateral Administrative Order ("Order") is issued on this
12 date pursuant to the authority vested in the President of the United
13 States by Section 106(a) of the Comprehensive Environmental Response,
14 Compensation, and Liability Act of 1980, 42 U.S.C. §9606(a), as
15 amended by the Superfund Amendments and Reauthorization Act of 1986,
16 Pub. L. 99-499 ("CERCLA"). The President delegated this authority to
17 the Administrator of the United States Environmental Protection Agency
18 ("EPA" or "Agency") by Executive Order 12580, January 23, 1987, 52
19 Fed. Reg. 2923, and further delegated it to the Assistant
20 Administrator for Solid Waste and Emergency Response and the Regional
21 Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This
22 authority has been redelegated to the Director, Hazardous Waste
23 Division, EPA, Region 9 ("Director") by Region 9 Delegations 1290.41
24 and 1290.42

25 II. PARTIES BOUND

26 1. This Order shall apply to and be binding upon John
27 Jeleniewski, Rose Marie Ann Jeleniewski, and Southwest Photo Chem,
28 Inc. (SWCI), (collectively "Respondents"), and their agents,

1 successors and assigns. No change in ownership or operational status
2 will alter Respondents' obligations under this Order. Notwithstanding
3 the terms of any contract or agreement, Respondents are responsible
4 for compliance with this Order and for ensuring that their employees,
5 contractors, and agents comply with this Order. Respondents shall
6 provide a copy of this Order to all contractors, subcontractors, and
7 consultants which are retained by Respondents to perform the work
8 required by this Order, within five (5) days after the Effective Date
9 of this Order or within five (5) days of retaining their services,
10 which ever is sooner.

11 2. Respondents may not convey any title, easement, or other
12 interest they may have, either individually or collectively, in any
13 property comprising the Site, as the term "Site" is defined below,
14 without a provision permitting the continuous implementation of the
15 provisions of this Order. Any Respondent wishing to transfer any
16 title, easement, or other interest it may have in any property
17 comprising the Site shall provide a copy of this Order to any
18 subsequent owner(s) or successor(s) before any ownership rights are
19 transferred. Any such Respondent shall advise U.S. EPA six (6) months
20 in advance of any anticipated transfer of interest.

21 **III. DEFINITIONS**

22 3. Unless otherwise expressly provided herein or in the
23 Definitions in exhibit "A" attached hereto, terms used in this Order
24 which are defined in CERCLA or in regulations promulgated under CERCLA
25 shall have the meaning assigned to them in CERCLA or in such
26 regulations. Whenever the terms listed below are used in this Order,
27 or in the Exhibits attached hereto and incorporated hereunder, the
28 following definitions shall apply:

1 "CERCLA" shall mean the Comprehensive Environmental
2 Response, Compensation, and Liability Act of 1980, as amended by the
3 Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601
4 et seq.

5 "Unilateral Order" or "Order" shall mean this Unilateral
6 Administrative Order, EPA docket number 99-12, and all exhibits
7 attached hereto. In the event of a conflict between this Unilateral
8 Order and any exhibit, this Unilateral Order shall control.

9 "EPA" shall mean the United States Environmental Protection
10 Agency and any successor departments or agencies of the United States.

11 "National Contingency Plan" or "NCP" shall mean the National
12 Oil and Hazardous Substances Pollution Contingency Plan promulgated
13 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40
14 C.F.R. Part 300.

15 "Response actions" shall be those specific work items each
16 Respondent is required to perform at the Site pursuant to this
17 Unilateral Order, as set forth in exhibit "B".

18 "Respondents" shall mean John Jeleniewski, Rose Marie Ann
19 Jeleniewski, and Southwest Photo Chem, Inc., both individually and
20 collectively.

21 "State" shall mean the State of California, and all of its
22 political subdivisions, including the Department of Toxic Substances
23 Control ("DTSC").

24 "United States" shall mean the United States of America.

25 IV. FINDINGS OF FACT

26 4. The Southwest Photo Chem Site ("Site") occupies
27 approximately 3/4 of an acre, and is located at 350 Electra Street, in
28 Pomona, Los Angeles County, California. The Site is located in an

1 area zoned for light industrial use.

2 5. The SWCI facility consists of a single 16,000 square foot
3 building. The building contains an office, a chemical laboratory, and
4 warehouse area, and a production area. There are reportedly three
5 6,000-gallon poly tanks of waste liquid inside the building, in
6 additional to other process tanks and vessels. During its years of
7 operation, SWCI manufactured specialty chemicals used in the
8 processing of motion picture films.

9 6. John Jeleniewski is the current owner and operator of SWCI.
10 SWCI has been operating at the Site since approximately 1978. Rose
11 Marie Ann Jeleniewski is a former operator at the Site at times of
12 disposal. SWCI is listed in the available land records as the current
13 owner of the Site property, and has been since 1982.

14 7. On February 18, 1999, and on June 17-18, 1999, EPA and START
15 conducted a Removal Assessment at the SWCI facility. Based upon this
16 inspection and supporting documentation provided by Los Angeles
17 County, EPA determined that the facility is no longer operational and
18 is incapable of properly managing the accumulated hazardous waste.
19 Information provided by a Los Angeles County (County) Hazardous
20 Material Inspector, the former owner/operator, label information and
21 limited field hazard categorization, indicates that hazardous
22 substances present on site include, but are not necessarily limited
23 to, in excess of 1500 drums of non-bulk waste containing flammable
24 methanol based waste streams, nitric and sulfuric acid solutions,
25 flammable and corrosive dimethylamine based liquids, and waste
26 water/clean-out/spent scrubber solutions including sulfuric acid and
27 hypochlorite solutions contaminated with various compounds from batch
28 processes and wastes from reactors and floor cleaning. In addition,

1 the hazardous substances found on site included bulk waste in three
2 6000 gallon poly storage tanks and several reaction vessels comprised
3 of high concentrated flammable methanol based solutions and unreacted
4 chemicals, products, and waste water. Results of analysis of the
5 samples previously collected by the County indicate the presence
6 detectable concentrations of phenolics, BTEXs, and halogenated
7 hydrocarbons in the onsite wastes. At a recent site inspection,
8 several deteriorated chemical drums were observed stored in an outside
9 storage area. Spillage from these drums could potentially be released
10 from the property during a rain event. At least two of these
11 chemicals could reasonably be expected to be encountered on site are
12 known to react violently with water (oleum, nitric acid). The
13 continued deterioration of the drums and containers of toxic,
14 flammable, reactive, and incompatible chemicals continues to present a
15 significant threat fire and explosion and resulting release of these
16 substances into the surrounding area.

17 8. When in operation, SWPI handled a large quantity of
18 dimethylamine, more than 10,000 gallons of methanol, isopropanol and
19 waste methanol. Oleum and toluene di-isocyanate were also reportedly
20 utilized in the process, as well as paraformaldehyde, phenyl
21 isocyanate, nitric acid, muriatic acid and caustic soda. Each of
22 these chemical are hazardous substances and are harmful to human
23 health and the environment. Dimethylamine is toxic and corrosive to
24 the eyes, skin, and respiratory tract, with prolonged exposure
25 potentially causing liver disorders. Methanol and isopropanol are
26 flammable liquids and potential toxic to humans. Oleum is a strong
27 oxidizer which may cause a fire upon contact with organic material.
28 Oleum reacts violently with water to form sulfuric acid and may

1 release SO3 and sulfuric acid mist upon heating. Oleum also reacts
2 with most metals to release flammable and potentially explosive
3 hydrogen gas. Toluene di-isocyanate, may cause respiratory tract
4 irritation and allergic reaction, and closed containers may explode
5 under extreme heat. Paraformaldehyde is a suspected human carcinogen,
6 is combustible, and can cause dust explosions. Phenyl Isocyanate may
7 be fatal if inhaled, causes skin burns, tearing eyes, respiratory
8 tract irritation and allergic reactions on contact, and is
9 incompatible with water, amines, strong bases and alcohol. Nitric
10 acid is a corrosive material which produces toxic and corrosive fumes
11 when heated or reacted with water, and can burn the skin, eyes and
12 respiratory tract, and can cause acute pulmonary edema or chronic
13 pulmonary diseases upon direct contact or inhalation of vapors.
14 Hydrochloric acid is a strong corrosive which produces toxic and
15 corrosive fumes when exposed to water and can burn the skin, eyes and
16 mucous membranes upon dermal contact and is moderately irritating to
17 the respiratory tract when inhaled. Muriatic acid is a strongly
18 corrosive liquid and a human poison and may cause an explosive
19 reaction with alcohol. Caustic soda and sulfuric acid are strong
20 corrosives. Ethylene glycol, a human poison by ingestion,
21 combustible, can react vigorously with oxidizers.

22 9. On September 28, 1998, a toxic vapor release from SWPI
23 resulted in the evacuation of several employees of an adjacent
24 business operation. The investigation of this release as well as
25 numerous other reported incidents, resulted in the issuance of a
26 Notice of Violation by Los Angeles County. On November 3, 1998, a
27 county official discovered an additional spill from the facility, the
28 cleanup of which was monitored by the County. During the EPA/START

1 Removal Assessment on June 17-18, 1999, numerous damaged but as yet
2 not leaking drums were observed and a strong noxious chemical odor was
3 readily apparent.

4 **V. CONCLUSIONS OF LAW**

5 10. The Southwest Photo Chemical Superfund site is a "facility"
6 as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. §
7 9601(9);

8 11. The Respondents, John Jeleniewski, Rose Marie Ann
9 Jeleniewski, and Southwest Photo Chem, Inc., are each "persons" as
10 that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601
11 (21);

12 12. The Respondent John Jeleniewski is the current and former
13 operator of the facility. Respondent SWCI is the current and former
14 owner of the facility. Respondents are each "liable parties" within
15 the meaning of Section 107(a), 42 U.S.C. §9607(a), and are subject to
16 this Order under Section 106(a) of CERCLA, 42 U.S.C. §9606(a);

17 13. Methanol, nitric acid, sulfuric acid, dimethylamine, and
18 hypochlorite solutions were each found at the Site, and each of these
19 substances are each "hazardous substances" as that term is defined in
20 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);

21 14. The past, present or future migration of hazardous
22 substances from the Site constitutes an imminent and substantial
23 endangerment due to the actual or threatened "release" of hazardous
24 substances, as the term "release" is defined in Section 101(22) of
25 CERCLA, 42 U.S.C. § 9601(22);

26 **VI. DETERMINATIONS**

27 Based on the Findings of Fact and the Conclusions of Law, the
28 Director of the Hazardous Waste Division, U.S. EPA Region IX, has made

1 the following determinations:

2 15. That an actual or threatened release of hazardous substances
3 from the Site presents an imminent and substantial endangerment to the
4 public health or welfare or the environment.

5 16. That conditions present at the Site constitute a threat to
6 public health or welfare or the environment based upon a consideration
7 of the factors set forth in the NCP at 40 C.F.R. § 300.415(b), and
8 that the actions required by this Order are necessary to protect the
9 public health, welfare and the environment.

10 17. The actions required by this Order, if properly performed,
11 will be deemed consistent with the National Contingency Plan, 40
12 C.F.R. Part 300 ("NCP"), and are appropriate to protect the public
13 health or welfare or the environment.

14 **VII. NOTICE TO THE STATE**

15 18. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a),
16 U.S. EPA has notified the State of California of the issuance of this
17 Order by providing the Department of Toxic Substances Control a copy
18 of this Order.

19 **VIII. EFFECTIVE DATE**

20 19. This Order is deemed effective seven (7) days following the
21 receipt of the Order by Respondents unless a conference is requested
22 as provided herein. If such a conference is requested, this Order
23 shall be effective the second (2nd) day following the day of such
24 conference unless modified in writing by U.S. EPA.

25 **IX. ORDER**

26 Based on the Findings of Fact, Conclusions of Law, and
27 Determinations, U.S. EPA hereby orders Respondents to perform the
28 specific work set forth below under the direction of the U.S. EPA's

1 On-Scene Coordinator, and to comply with all requirements of this
2 Order:

3 A. Work and Deliverables:

4 20. Respondents shall:

5 a. Immediately provide 24-hour site security. Security shall
6 continue for the duration of removal operations;

7 b. Sample and characterize all materials in drums, tanks,
8 reaction vessels and other containers on the Site;

9 c. Perform air monitoring and sampling in accordance with OSHA
10 requirements during all phases of the removal action. Use operational
11 controls such as exhaust scrubbers to abate odor problems, as
12 appropriate;

13 d. Remove or stockpile non-hazardous equipment, and debris to
14 provide adequate space for response operations;

15 e. Prepare all hazardous substances for proper transportation
16 for disposal, or where feasible, alternative treatment or
17 reuse/recycle options. The above may include bulking of compatibles,
18 direct shipment for reuse, recontainerization of materials into DOT
19 specification containers, lab packing small quantities, solidification
20 of liquid wastes, and neutralization or other on-site treatment of
21 wastes;

22 f. Remove grossly contaminated equipment, structures and debris
23 for proper disposal or decontamination; and

24 g. Prepare and implement surface and subsurface soil sampling
25 to determine the nature and extent of residual contamination.

26 22. Respondents shall, for the work required to be performed
27 pursuant to this Order:

28 a. Provide notification to U.S. EPA as described below;

1 b. Prepare a Quality Assurance Project Plan ("QAPP") that
2 is consistent with the "Quality Assurance/Quality Control Guidance for
3 Removal Activities: Sampling QA/QC Plan and Data Validation
4 Procedures," EPA OSWER Directive 9360.4-01, dated April 1990. The
5 Workplan shall be reviewed by U.S. EPA, which may approve, disapprove,
6 require revisions, or modify the Workplan. Once approved, the
7 Workplan shall be deemed to be incorporated into and made a fully
8 enforceable part of this Order. The Respondents shall implement all
9 workplan(s) as finally approved by the U.S. EPA.;

10 c. Prepare a Health & Safety Plan prepared in accordance
11 with EPA's Superfund Standard Operating Safety Guide, dated June 1992,
12 and shall comply with all current Occupational Safety and Health
13 Administration ("OSHA") regulations applicable to Hazardous Waste
14 Operations and Emergency Response, 29 C.F.R. Part 1910. Respondents
15 shall incorporate all changes to the health and safety plan
16 recommended by EPA and implement the health and safety plan throughout
17 the performance of the removal action; and

18 d. Prepare a post cleanup surface and subsurface sampling
19 plan.

20 23. Respondents shall notify U.S. EPA in writing of the name,
21 title and qualifications of the individual(s) who will be responsible
22 for carrying out the terms of this Order, and the name(s) of any
23 contractor(s) or subcontractor(s). Notification will be provided
24 within fourteen (14) days after the Effective Date of this Order. The
25 qualifications of the persons, contractors, and subcontractors
26 undertaking the work for Respondents shall, in accordance with
27 paragraphs 24 and 25 below, be subject to U.S. EPA review and
28 acceptance.

1 24. If U.S. EPA disapproves in writing of any person's or
2 contractor's technical and/or experience qualifications, U.S. EPA will
3 notify the Respondents in writing, and Respondents shall subsequently
4 notify U.S. EPA within fourteen (14) days of Respondent's receipt of
5 U.S. EPA's written notice, of the identity and qualifications of the
6 replacement(s). A subsequent U.S. EPA disapproval of the
7 replacement(s) shall be deemed a failure to comply with the Order.

8 25. Respondents may propose to change the individual(s),
9 contractor(s), or subcontractor(s) retained to direct and supervise
10 the work required by this Order. If Respondents wish to propose such
11 a change, the Respondents shall notify EPA in writing of the name,
12 title, and qualifications of the proposed individual(s), proposed
13 contractor(s), or proposed subcontractor(s), and such individual(s),
14 contractor(s) or subcontractor(s) shall be subject to approval by U.S.
15 EPA in accordance with the terms of paragraphs 24 and 25 above. The
16 naming of any replacement(s) by Respondents shall not extend any
17 deadlines required by this Order nor relieve the Respondents of any of
18 their obligations to perform the work required by this Order.

19 26. At least seven (7) days prior to commencing any work at the
20 Site pursuant to this Order, Respondents shall submit to U.S. EPA a
21 certification that Respondents or their contractor(s) and
22 subcontractor(s) have adequate insurance coverage or have indemnifica-
23 tion for liabilities for injuries or damages to persons or property
24 which may result from the activities to be conducted by or on behalf
25 of Respondents pursuant to this Order. Respondents shall ensure that
26 such insurance or indemnification is maintained for the duration of
27 performance of the work required by this Order. Respondents shall
28 ensure that the United States is named as an additional named insured

1 on any such insurance policies.

2 27. All documents, including technical reports, and other
3 correspondence to be submitted by the Respondents pursuant to this
4 Order, shall be sent by over-night mail to the following addressees or
5 to such other addressees as U.S. EPA hereafter may designate in
6 writing, and shall be deemed submitted on the date received by U.S.
7 EPA. Respondents shall submit two (2) copies of each document to U.S.
8 EPA, and two (2) copies to the DTSC.

9 28. U.S. EPA shall review, comment, and approve or disapprove
10 each plan, report, or other deliverable submitted by Respondents. All
11 U.S. EPA comments on draft deliverables shall be incorporated by the
12 Respondents. U.S. EPA shall notify the Respondents in writing of
13 EPA's approval or disapproval of a final deliverable. In the event of
14 any disapproval, U.S. EPA shall specify the reasons for such
15 disapproval, U.S. EPA's required modifications, and a time frame for
16 submission of the revised report, document, or deliverable. If the
17 modified report, document or deliverable is again disapproved by U.S.
18 EPA, U.S. EPA shall first notify the Respondents of its disapproval of
19 the resubmitted report, document, or deliverable, and then may draft
20 its own report, document or deliverable and incorporate it as part of
21 this Order, may seek penalties from the Respondents for failing to
22 comply with this Order, or may conduct the remaining work required by
23 this Order.

24 29. For purposes of this Order, U.S. EPA's authorized
25 representatives shall include, but not be limited to, DTSC,
26 consultants and contractors hired by U.S. EPA to oversee activities
27 required by this Order.
28

1 30. Respondents will notify U.S. EPA of their respective field
2 activities at least one week before initiating them so that U.S. EPA
3 may adequately schedule oversight tasks.

4 B. General Provisions:

5 31. All work required by this Order shall be conducted in
6 accordance with: the applicable portions of the EPA Action Memorandum,
7 dated June 23, 1999 (attachment A); CERCLA; the NCP; U.S. EPA Region 9
8 "Guidance for Preparing Quality Assurance Project Plans for Superfund
9 Remedial Projects" (EPA, November 1992); any final amended or
10 superseding versions of such documents provided by U.S. EPA; other
11 applicable U.S. EPA guidance documents; and any report, document or
12 deliverable prepared by U.S. EPA because Respondents fail to comply
13 with this Order.

14 32. All plans, schedules, and other reports that require U.S.
15 EPA's approval and are required to be submitted by the Respondents
16 pursuant to this Order and shall, upon approval by U.S. EPA, be
17 incorporated into and enforceable under this Order.

18 33. U.S. EPA will oversee Respondents' activities as specified
19 in Section 104(a)(1) of CERCLA Section, 42 U.S.C. §9604(a)(1).
20 Respondents will support U.S. EPA's initiation and implementation of
21 activities needed to carry out its oversight responsibilities.
22 Respondents shall also cooperate and coordinate the performance of all
23 work required to be performed under this Order with all other work
24 being performed at the site, including work performed by U.S. EPA, the
25 State, another Respondent, or any other party performing work at the
26 site with the approval of EPA.

27 34. Respondents shall undertake all actions required by this
28 Order in accordance with the requirements of all applicable local,

1 state, and federal laws and regulations unless an exemption from such
2 requirements is specifically provided under CERCLA or unless the
3 Respondents obtain a variance or exemption from the appropriate
4 governmental authority.

5 35. Any hazardous substance removed off-site pursuant to this
6 Order for treatment, storage, or disposal shall be treated, stored, or
7 disposed of at a facility in compliance with Section 121(d)(3) of
8 CERCLA, 42 U.S.C. § 9621(d)(3), and the EPA "Revised Procedures for
9 Implementing Off-Site Response Actions," (OSWER Directive 98343.11,
10 November 13, 1987).

11 **X. NOTICE OF INTENT TO COMPLY**

12 36. Respondents shall, within two (2) days of the Effective Date
13 of this Order, provide written notice to U.S. EPA of Respondents'
14 irrevocable intent to comply with this Order. Failure to respond, or
15 failure to agree to comply with this Order, shall be deemed a refusal
16 to comply with this Order.

17 **XI. OPPORTUNITY TO CONFER**

18 37. Respondents may, within three (3) days of receipt of this
19 Order, request a conference with the Chief of the Emergency Response
20 Office in the Superfund Division, or whomever the Chief of the
21 Emergency Response Office may designate. If requested, the conference
22 shall occur within three (3) days of the request, unless extended by
23 mutual agreement of the Parties, at U.S. EPA's Regional Office, 75
24 Hawthorne Street, San Francisco, California.

25 38. At any conference held pursuant to Respondents' request, the
26 Respondents may appear in person, or be represented by an attorney or
27 other representative. If Respondents desire such a conference, the
28 Respondents shall contact David Rabbino, Assistant Regional Counsel,

1 at (415) 744-1336.

2 39. The purpose and scope of any such conference held pursuant
3 to this Order shall be limited to issues involving the implementation
4 of the response actions required by this Order and the extent to which
5 Respondents intend to comply with this Order. If such a conference is
6 held, the Respondents may present any evidence, arguments or comment
7 regarding this Order, its applicability, any factual determinations
8 upon which the Order is based, the appropriateness of any action which
9 the Respondents are ordered to take, or any other relevant and
10 material issue. Any such evidence, arguments or comments should be
11 reduced to writing and submitted to U.S. EPA within three (3) days
12 following the conference. This conference is not an evidentiary
13 hearing, and does not constitute a proceeding to challenge this Order.
14 It does not give Respondents a right to seek review of this Order, or
15 to seek resolution of potential liability, and no official
16 stenographic record of the conference will be made. If no conference
17 is requested, any such evidence, arguments or comments must be
18 submitted in writing within three (3) days following the Effective
19 Date of this Order. Any such writing should be directed to David
20 Rabbino, Assistant Regional Counsel, at the address cited above.

21 40. Respondents are hereby placed on notice that U.S. EPA will
22 take any action which may be necessary in the opinion of U.S. EPA for
23 the protection of public health and welfare and the environment, and
24 Respondents may be liable under Section 107(a) of CERCLA, 42 U.S.C.
25 Section 9607(a), for the costs of those actions.

26 **XII. ENDANGERMENT AND EMERGENCY RESPONSE**

27 41. In the event of any action or occurrence during the
28 performance of the work which causes or threatens to cause a release

1 of a hazardous substance or which may present an immediate threat to
2 public health or welfare or the environment, Respondents shall
3 immediately take all appropriate action(s) to prevent, abate, or
4 minimize the threat, and shall immediately notify U.S. EPA's primary
5 On-Scene Coordinator ("OSC"), or, if the primary OSC is unavailable,
6 U.S. EPA's alternate OSC, as designated below in paragraph 45. If
7 neither of these persons is available, Respondents shall notify the
8 U.S. EPA Emergency Response Unit, Region 9, phone number (415) 744-
9 2000. Respondents shall take such action(s) in consultation with U.S.
10 EPA's OSC and in accordance with all applicable provisions of this
11 Order, including but not limited to the Health and Safety Plan.

12 42. Nothing in the preceding paragraph shall be deemed to limit
13 any authority of the United States to take, direct, or order all
14 appropriate action to protect human health and the environment or to
15 prevent, abate, or minimize an actual or threatened release of
16 hazardous substances at or from the Site.

17 **XIII. MODIFICATION OF WORK REQUIRED**

18 43. In the event of unanticipated or changed circumstances at
19 the Site, Respondents shall notify the U.S. EPA OSC by telephone
20 within twenty-four (24) hours of discovery of the unanticipated or
21 changed circumstances. This verbal notification shall be followed by
22 written notification postmarked no later than three (3) days of
23 discovery of the unanticipated or changed circumstances.

24 44. The Director of the Superfund Division, U.S. EPA Region IX,
25 may determine that in addition to tasks addressed herein, additional
26 work may be required to address the unanticipated or changed
27 circumstances referred to in paragraph 39. Where consistent with
28 Section 106(a) of CERCLA, the Director of the Superfund Division, U.S.

1 EPA Region IX, may direct, as an amendment to this Order, that
2 Respondents perform these response actions in addition to those
3 required herein. Respondents shall implement the additional tasks
4 which the Director of the Superfund Division, U.S. EPA Region IX,
5 identifies. The additional work shall be completed according to the
6 standards, specifications, and schedules set forth by the Director of
7 the Superfund Division, U.S. EPA Region IX in any modifications to
8 this Order.

9 **XIV. DESIGNATED PROJECT MANAGERS**

10 45. U.S. EPA designates William Lewis, an employee of Region IX
11 of U.S. EPA, as its primary On-Scene Coordinator ("OSC") and
12 designated representative at the Site, who shall have the authorities,
13 duties, and responsibilities vested in the OSC by the NCP. This
14 includes, but is not limited to, the authority to halt, modify,
15 conduct, or direct any tasks required by this Order or undertake any
16 response actions (or portions of the response action) when conditions
17 at the Site present or may present a threat to public health or
18 welfare or the environment as set forth in the NCP. Within fifteen
19 (15) days of the Effective Date of this Order, Respondents shall
20 designate a Project Coordinator who shall be responsible for
21 overseeing Respondents' implementation of this Order. To the maximum
22 extent possible, all oral communications between Respondents and U.S.
23 EPA concerning the activities performed pursuant to this Order shall
24 be directed through U.S. EPA's OSC and Respondents' Project
25 Coordinator. All documents, including progress and technical reports,
26 approvals, and other correspondence concerning the activities
27 performed pursuant to the terms and conditions of this Order, shall be
28 delivered in accordance with Paragraphs 27-28 above.

1 46. U.S. EPA and Respondents may change their respective OSC and
2 Project Coordinator. Notification of such a change shall be made by
3 notifying the other party in writing at least five (5) days prior to
4 the change, except in the case of an emergency, in which case
5 notification shall be made orally followed by written notification as
6 soon as possible.

7 47. Consistent with the provisions of this Order, the U.S. EPA
8 designates Robert Mandel, (415) 744-2290, as an alternate OSC, in the
9 event William Lewis is not present at the site or is otherwise
10 unavailable. During such times, Mr. Mandel shall have the authority
11 vested in the On-Scene Coordinator ("OSC") by the NCP, as set forth in
12 paragraph 43 above.

13 48. The absence of the U.S. EPA OSC from the Site shall not be
14 cause for the stoppage of work. Nothing in this Order shall limit the
15 authority of the U.S. EPA OSC under federal law.

16 **XV. SITE ACCESS**

17 49. Respondents shall permit U.S. EPA and its authorized
18 representatives to have access at all times to the Site to monitor any
19 activity conducted pursuant to this Order and to conduct such tests or
20 investigations as U.S. EPA deems necessary. Nothing in this Order
21 shall be deemed a limit upon U.S. EPA's authority under federal law to
22 gain access to the Site.

23 50. To the extent that Respondents require access to land other
24 than land they own in carrying out the terms of this Order,
25 Respondents shall, within fifteen (15) days of the Effective Date of
26 this Order, obtain access for U.S. EPA, its contractors, oversight
27 officials, or other authorized representatives; state oversight
28 officials and state contractors; and Respondents or their authorized

1 representatives. If Respondents fail to gain access within fifteen
2 (15) days, they shall continue to use best efforts to obtain access
3 until access is granted. For purposes of this paragraph, "best
4 efforts" includes but is not limited to, seeking judicial assistance,
5 providing indemnification, and/or the payment of money as
6 consideration for access. If access is not provided within the time
7 referenced above, U.S. EPA may obtain access under Sections 104(e) or
8 106(a) of CERCLA.

9 **XVI. REIMBURSEMENT OF OVERSIGHT COSTS**

10 51. Respondents shall reimburse U.S. EPA, upon written demand,
11 for all response costs incurred by the United States in overseeing
12 Respondents' implementation of the requirements of this Order. U.S.
13 EPA may submit to Respondents on a periodic basis a bill for all
14 response costs incurred by the United States with respect to this
15 Order. Respondents shall, within thirty (30) days of receipt of the
16 bill, remit by cashiers or certified check for the amount of those
17 costs made payable to the "Hazardous Substance Superfund," to the
18 following address:

19 U.S. Environmental Protection Agency
20 Region 9, Attn: Superfund Accounting
21 P.O. Box 360863M
Pittsburgh, PA 15251

22 Respondents shall send a cover letter with any check and the letter
23 shall identify the Southwest Photo Chem Site by name and make
24 reference to this Order. Respondents shall send simultaneously to the
25 U.S. EPA OSC notification of any amount paid, including a photocopy of
26 the check.

27 52. Interest at the rate established under section 107(a) of
28 CERCLA shall begin to accrue on the unpaid balance from the day of the

1 original demand notwithstanding any dispute or objection to any
2 portion of the costs.

3 **XVII. DELAY IN PERFORMANCE**

4 53. Any delay in performance of any requirement of this Order
5 that, in the U.S. EPA's judgment, is not properly justified by
6 Respondents under the terms of this Section shall be considered a
7 violation of this Order. Any delay in performance of any requirement
8 of this Order shall not affect any other obligation of Respondents
9 under the terms and conditions of this Order.

10 54. Respondents, as applicable, shall notify U.S. EPA of any
11 delay or anticipated delay in performing any requirement of this
12 Order. Such notification shall be made by telephone to U.S. EPA's
13 primary OSC within twenty-four (24) hours after Respondents first knew
14 or should have known that a delay might occur. The Respondents shall
15 adopt all reasonable measures to avoid or minimize any such delay.
16 Within three (3) days after notifying U.S. EPA by telephone, the
17 Respondents shall provide written notification fully describing the
18 nature of the delay, any justification for delay, any reason why the
19 Respondents should not be held strictly accountable for failing to
20 comply with any relevant requirements of this Order, the measures
21 planned and taken to minimize the delay, and a schedule for im-
22 plementing the measures that will be taken to mitigate the effect of
23 the delay. Increased costs or expenses associated with implementation
24 of the activities called for in this Order are not justifications for
25 any delay in performance.

26 55. If Respondents are unable to perform any activity or submit
27 any document within the time required under this Order, the
28 Respondents may, prior to the expiration of the time, request an

1 extension of time in writing. The extension request shall include a
2 justification for the delay. The submission of an extension request
3 shall not itself affect or extend the time to perform any of
4 Respondents' obligations under this Order.

5 56. If U.S. EPA determines that good cause exists for an
6 extension of time, it may grant a request made by Respondents pursuant
7 to paragraph 53 above, and specify in writing to the Respondents the
8 new schedule for completion of the activity and/or submission of the
9 document for which the extension was requested.

10 **XVIII. RECORD PRESERVATION**

11 57. Respondents shall maintain, during the pendency of this
12 Order, and for a minimum of five (5) years after U.S. EPA provides
13 notice to Respondents that the work has been completed, a depository
14 of the records and documents required to be prepared under this Order.
15 In addition, Respondents shall retain copies of the most recent
16 version of all documents that relate to hazardous substances at the
17 Site and that are in its possession or in the possession of its
18 employees, agents, contractors, or attorneys. After this five-year
19 period, Respondents shall notify U.S. EPA at least thirty (30) days
20 before the documents are scheduled to be destroyed. If U.S. EPA so
21 requests, Respondents shall provide these documents to U.S. EPA.

22 **XIX. ENFORCEMENT AND RESERVATIONS**

23 58. U.S. EPA reserves the right to bring an action against
24 Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery
25 of any response costs incurred by the United States related to this
26 Order and not reimbursed by Respondents. This reservation shall
27 include but not be limited to past costs, direct costs, indirect
28 costs, the costs of oversight, the costs of compiling the cost

1 documentation to support oversight costs, as well as accrued interest
2 as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

3 59. Notwithstanding any other provision of this Order, at any
4 time during the response action, U.S. EPA may perform its own studies,
5 complete the response action (or any portion of this response action)
6 and seek reimbursement from Respondents for its costs, or seek any
7 other appropriate relief.

8 60. Nothing in this Order shall preclude U.S. EPA from taking
9 any additional enforcement action, including modification of this Or-
10 der or issuance of additional Orders, or additional remedial or
11 removal actions as U.S. EPA may deem necessary, or from requiring
12 Respondents in the future to perform additional activities pursuant to
13 CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law.
14 Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C.
15 §9607(a), for the costs of any such additional actions.

16 61. Notwithstanding any provision of this Order, the United
17 States hereby retains all of its information gathering, inspection and
18 enforcement authorities and rights under CERCLA, the Resource
19 Conservation and Recovery Act, or any other applicable statutes or
20 regulations.

21 62. Notwithstanding compliance with the terms of this Order,
22 including the completion of an U.S. EPA-approved response actions,
23 Respondents are not released from liability, if any, for any
24 enforcement actions beyond the terms of this Order taken by U.S. EPA.

25 63. U.S. EPA reserves the right to take any enforcement action
26 pursuant to CERCLA or any other legal authority, including the right
27 to seek injunctive relief, monetary penalties, reimbursement of
28 response costs, and punitive damages for any violation of law or this

1 Order.

2 64. U.S. EPA expressly reserves all rights and defenses that it
3 may have, including the U.S. EPA's right both to disapprove of work
4 performed by Respondents and to request the Respondents perform tasks
5 in addition to those detailed in this Order, as provided in Section
6 VIII(a) (Work to be Performed) of this Order.

7 65. This Order does not release Respondents, individually or
8 collectively, from any claim, cause of action or demand in law or
9 equity, including, but not limited to, any claim, cause of action, or
10 demand which lawfully may be asserted by representatives of the United
11 States or the State of California.

12 66. No informal advice, guidance, suggestions, or comments by
13 U.S. EPA regarding reports, plans, specifications, schedules, and any
14 other writing submitted by Respondents will be construed as relieving
15 Respondents of their obligation to obtain such formal approval as may
16 be required by this Order.

17 **XX. SEVERABILITY**

18 67. If any provision or authority of this Order or the
19 application of this Order to any circumstance is held by a court to be
20 invalid, the application of such provision to other circumstances and
21 the remainder of this Order shall not be affected thereby, and the
22 remainder of this Order shall remain in force.

23 **XXI. DISCLAIMER**

24 68. The United States, by issuance of this Order, assumes no
25 liability for any injuries or damages to persons or property resulting
26 from acts or omissions by Respondents, or their employees, agents,
27 successors, assigns, contractors, or consultants in carrying out any
28 action or activity pursuant to this Order. Neither U.S. EPA nor the

1 United States shall be held as a party to any contract entered into by
2 Respondents, or their employees, agents, successors, assigns,
3 contractors, or consultants in carrying out any action or activity
4 pursuant to this Order.

5 **XXII. PENALTIES FOR NONCOMPLIANCE**

6 69. Respondents are advised pursuant to Section 106(b) of
7 CERCLA, 42 U.S.C. Section 9606(b), that willful violation or
8 subsequent failure or refusal to comply with this Order, or any
9 portion thereof, may subject Respondents to a civil penalty of up to
10 \$25,000 per day for each day in which such violation occurs, or such
11 failure to comply continues. Failure to comply with this Order, or
12 any portion thereof, without sufficient cause may also subject
13 Respondents to liability for punitive damages in an amount three times
14 the amount of any cost incurred by the government as a result of the
15 failure of Respondents to take proper action, pursuant to Section
16 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

17 **XXIII. TERMINATION AND SATISFACTION**

18 70. The provisions of this Order shall be deemed satisfied upon
19 Respondents' receipt of written notice from U.S. EPA that Respondents
20 have demonstrated, to the satisfaction of U.S. EPA, that all of the
21 terms of this Order, including any additional tasks which U.S. EPA has
22 determined to be necessary, have been completed.
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Unilateral Administrative Order 99-12

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By: Keith A. Takata
Keith A. Takata, Director
Superfund Division
Region 9

Date: 6-28-99

EPA Region 9 Contacts:

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